

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS  
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works	(2) MEETING DATE 10/27/2015	(3) CONTACT/PHONE Mark Hutchinson, Deputy Director of Public Works (805) 781-5458	
(4) SUBJECT Request approval of a letter to California Secretary for Natural Resources John Laird regarding the regulation and permitting of Sand Mines in San Luis Obispo County. Districts 1, 4 and 5			
(5) RECOMMENDED ACTION It is recommended that the Board of Supervisors approve and direct the Chairperson to sign the attached letter to the California Secretary for Natural Resources, John Laird, regarding the regulation and permitting of Sand Mines in San Luis Obispo County.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT N/A	(8) ANNUAL FINANCIAL IMPACT N/A	(9) BUDGETED? N/A
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____ ) <input checked="" type="checkbox"/> Board Business (Time Est. <u>30 min</u> )			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A    Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) District 1 District 5			

Reference:      15OCT27-BB-1

# County of San Luis Obispo



TO: Board of Supervisors

FROM: Public Works

Mark Hutchinson, Deputy Director of Public Works

VIA: Wade Horton, Director of Public Works

DATE: 10/27/2015

SUBJECT: Request approval of a letter to California Secretary for Natural Resources John Laird regarding the regulation and permitting of Sand Mines in San Luis Obispo County. Districts 1, 4 and 5

## **RECOMMENDATION**

It is recommended that the Board of Supervisors approve and direct the Chairperson to sign the attached letter to the California Secretary for Natural Resources, John Laird, regarding the regulation and permitting of Sand Mines in San Luis Obispo County.

## **DISCUSSION**

Sand mines are a type of surface mine located in river channels that “mine” or remove sand and gravel deposited by annual river flows. This type of mining is restricted to more arid climates where rivers typically flow only in the wet season, and where the rivers move sufficient amounts of sediments on a regular basis. There are currently seven permitted sand mines in County jurisdiction located on the Salinas, Estrella, and Santa Maria Rivers and on Huerhuero and Navajo Creeks. There are also permitted mines on the Salinas and Santa Maria Rivers in Santa Barbara and Monterey Counties.

At your Board’s August 18, 2015 meeting, Mr. Paul Viborg of Viborg Sand and Gravel Company in Paso Robles informed the Board during general public comment that he was closing two of his river sand mines because of the regulatory burden imposed by the State, specifically, the Department of Fish and Wildlife. The Board directed staff to review the requirements of the California Department of Fish and Wildlife relating to sand mines, propose possible remedies to assist with this on-going situation, and define any impacts to the County’s ability to continue with construction work that is dependent on sand and gravel.

Staff has reviewed copies of documents provided by Mr. Viborg including the Streambed Alteration Agreement (Fish and Wildlife Permit) for the Templeton Sand and Gravel Mine, the Activity Management Plan (Air Quality Plan) for the Estrella River Mine, and the County issued Conditional Use Permits and Reclamation Plans for both the Templeton Sand and Gravel Mine and the Estrella River Mine. The County Planning Department also provided the project files for both mines for additional information.

In California, surface mines are regulated by the Surface Mining and Reclamation Act (SMARA). SMARA provides that local “lead agencies (Cities and Counties) adopt ordinances for land use permitting and reclamation procedures which provide the regulatory framework under which local mining and reclamation activities are conducted. The State Mining and Geology Board (SMGB) reviews these lead agency ordinances to determine whether each ordinance meets or exceeds the surface mining and reclamation procedures established pursuant to SMARA. The SMGB promulgates regulations to clarify and interpret the SMARA's provisions, and also serves as a policy and appeals board. In addition, since sand mining is conducted within rivers and streams, they are also regulated by the California Fish and Game Code. Section 1602 of the Fish and Game Code provides that *“An entity may not . . . use any material from the bed, channel, or bank of, any river, stream, or lake . . . unless . . . The department [of Fish and Wildlife] determines that the activity may substantially adversely affect an existing fish or wildlife resource and issues a final agreement to the entity that includes reasonable measures necessary to protect the resource, and the entity conducts the activity in accordance with the agreement.”* Finally, because these permits and agreements are discretionary actions, they are subject to the requirements of the California Environmental Quality Act (CEQA).

After meeting with Mr. Viborg, Planning Department Staff assigned to the mining program, and reviewing the documents listed above, staff has prepared the attached letter. We note that while the letter focuses on the permitting of sand mines, much of the perspective is drawn from staff's past experiences in permitting County projects through various State and Federal regulatory agencies.

The letter articulates concerns regarding the less than full utilization of interagency coordination processes contained in CEQA and SMARA and the resulting undermining of the role of the local Lead Agency, and by extension the local community. We highlight concerns regarding the application of the regulatory process as it affects small business, resulting in an industry favoring larger operations which, although they have the financial resources to both contend with regulatory proposals and comply with the resulting permit conditions, also results in more substantial environmental impacts. And finally, we question the failure of the regulatory agencies to fully consider the secondary economic and environmental effects of their actions, most notably the air quality and traffic impacts of importing material that otherwise could have been mined locally and the loss of flood control benefits from the removal of sediment from the waterways.

The Board also directed staff to define any impacts to the County's ability to continue with construction work that is dependent on sand and gravel. At this point in time we have not been able to establish a measurable link between the loss of sand mines in the County and a shortage or cost increase in the construction materials (asphalt and concrete) derived from the raw sand and gravel. However, representatives of the sand mining industry caution that the inevitable closure of mines that cannot contend with the level of regulation imposed on the Templeton and Estrella mines will lead to higher costs for public construction projects.

#### **OTHER AGENCY INVOLVEMENT/IMPACT**

Development of the attached letter has involved reviewing the regulations and recent permit actions of the California Department of Conservation Office of Mine Regulation, the California Department of Fish and Wildlife, and meeting with representatives of the Department of Planning and Building.

## **FINANCIAL CONSIDERATIONS**

There are no financial considerations associated with the production of the attached letter. As noted above, increased regulation of sand mines may result in increased costs for raw materials used in public construction projects.

## **RESULTS**

It is intended that the attached letter help initiate efforts to better coordinate State agency involvement in local land use issues to fully achieve the interagency coordination benefits available through both CEQA and SMARA, thereby leading to a well governed community.

## **ATTACHMENTS**

1. Letter to Secretary Laird

File: CF 690.10.02

Reference: 15OCT27-BB-1

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